

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION
APPEAL FROM ORDER NO.820 OF 2005

Sou Vimal Ashok Pisal & anr . Appellants

VS

Shri Chandrakant Damodhar Bodhe & ors.Respts

Mr.Niranjan Shimpi for Appellants
Mr.Mandar Limaye for Respondents

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CORAM : B.H.MARLAPALLE, J

DATE: 26th September, 2005

P.C.

1. Heard learned counsel for the appellants who are the defendants in Special Civil Suit No.159 of 2003. They are aggrieved by the order dated 7th June, 2005 passed by the learned Civil Judge, Sr.Division at Satara allowing application at

Exhibit 5 and 54. By the said order the defendant nos. 1 to 3 have been restrained temporarily from causing any obstruction to the plaintiff's possession in the suit property and the defendant no.3 has been further restrained from creating any third party interest at the force of the sale deed dated 6th October, 2000.

2. Special Civil Suit No. 159 of 2003 have been filed by the present respondent no. 1 claiming that the deceased Dada Damu Shinde was the owner of the suit land located at village Pande in taluka Wai District Satara and he was married to Bhikhabai. Dada Shinde died on 14th August, 1996 and his wife died on 21st November, 2002 leaving behind two daughters namely Hirabai-defendant no. 1 and Vimal-defendant no.2. It appears that the defendant nos. 1 and 2 signed a sale deed on 6th October, 2003 in favour of the defendant no.3 who is presently staying at Ahmednagar. The plaintiff claimed that on 5th March 1990 the deceased Dada who was looked after by the plaintiff had executed a will and bestowed the suit lands in favour of the plaintiffs. As per the will, the deceased Dada did not give any property to any of his two daughters

and therefore the sale deed dated 6th October, 2003 executed by them in favour of defendant no. 2 is illegal. The learned Judge of the trial court after hearing both the parties noted that the defendant no. 3 in her written statement claimed 1/3rd share. The son of defendant no. 2 was staying with Dada for sometime but the plaintiff being the son of Hirabai, the deceased Dada executed the will which was prima facie document to make out a case in favour of the plaintiff. The veracity of the will would be considered during the trial of the suit but the plaintiff proved his prima facie possession over the suit land.

3. The reasoning given by the trial court in granting the order of temporary injunction does not suffer from any error and therefore no interference is called for in the order of temporary injunction.

4. Appeal is dismissed in limine.

(B.H.Marlapalle, J)